Office - Supreme Court, U.S.
FILED
AUG 2 1983
ALEXANDER L. STEVAS

IN THE 83-167

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1982

NO:

PAULA E. PFISTER,

Petitioner

v.

AMERICAN AIRLINES, INC., a Corporation,

and

BARBARA BAUER (Stewardess Supervisor and Employee of AMERICAN AIRLINES, INC.)

IRVING CURHAN (Director of Flight Service and Employee of AMERICAN AIRLINES, INC.

AIRLINE STEWARDS AND STEWARDESSES ASSOCIATION,

TRANSPORT WORKERS UNION LOCAL 550/552, AFL-CIO,

HONORABLE MANUEL REAL, JUDGE OF THE U. S. DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA,

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT,

Respondents.

PETITION FOR WRIT OF CERTIORARI DIRECTED TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT AND/OR PETITION FOR WRITS OF MANDAMUS/PROHIBITION OR THE LIKE DIRECTED TO SAID COURT OF APPEALS AND U. S. DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA.

- APPENDIX -

EUGENE J. CARELLA, ESQ.
P. O. Box 67292
Century City Station
Los Angeles, CA 90067-0292
Counsel for Petitioner

(213) 553-3721

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IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

PAULA E. PFISTER, Plaintiff, vs. AMERICAN AIRLINES, INC., a Corporation, et al., Defendants.	CIVIL ACTION NO. 78 4216R(Gx) ORDER OF DISMISSAL ENTERED JUN 10, 1981

The Motions of defendants, AMERICAN AIRLINES, INC. and AIRLINE STEWARD AND STEWARDESSES ASSOCIATION, TRANSPORTATION WORKER'S UNION LOCAL 550/552, AFL-CIO, for an Order Dismissing plaintiff, PAULA E. PFISTER's, Third Amended Complaint were heard on June 8, 1981, by the Honorable Manuel L. Real, District Judge presiding.

The Court, having considered the moving and opposition papers, as well as oral argument, grants defendants' Motions on the following grounds:

1. Plaintiff has failed to apply for leave to file her Third Amended Complaint.

2. Plaintiff's action is barred by the applicable Statute of Limitations.

3. Plaintiff's allegations fail to set forth any facts sufficient to toll the applicable Statute of Limitations.

4. (handwritten in) Plaintiff's allegations fail to state a claim under Federal law.

IT IS THEREFORE ORDERED that plaintiff's Third Amended Complaint be dismissed without leave to amend.

DATED: JUN 9 1981

MANUEL L. REAL (stamped)

MANUEL L. REAL, UNITED STATES
District Judge

- APPENDIX B -

FILED JUN 8, 1981

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

PAULA E. PFISTER, Plaintiff, v. AMERICAN AIRLINES, INC., etc., et al., Defendants.	)	No. CV78-4216-R ORDER DENYING MOTION TO DISQUALIFY DISTRICT COURT

Plaintiff's motion to disqualify the Honorable Manuel Real was filed on June 8, 1981. The Court, the Honorable Malcolm M. Lucas, District Judge, presiding, has carefully considered the motion papers and accompanying affidavits filed by plaintiff. The Court denies the motion to disqualify, on the grounds that plaintiff has not demonstrated that Judge Real has any personal bias or prejudice against or for any party to the suit.

IT IS SO ORDERED.

IT IS FURTHER ORDERED that the Clerk shall serve by United States mail, copies of this Order on counsel for the plaintiff and for the defendants in this matter.

Dated: June 8, 1981

MALCOLM M. LUCAS
Malcolm M. Lucas
United States District Judge

- APPENDIX C -

FILED JAN 5 1983

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

PAULA E. PFISTER,

Plaintiff-Appellant,

v.

AMERICAN AIRLINES, INC., a corporation; BARBARA BAUER, Stewardess Supervisor/Employee of AMERICAN AIRLINES, INC.; IRVING CURHAN, Director of Flight Service/ Employee of AMERICAN AIRLINES, INC.; AIR LINE STEWARDS AND STEWARDESSES ASSOCIATION, TRANSPORT WORKERS UNION LOCAL 550/522, AFL-CIO.

Defendants-Appellees.

No. 81-5550

D.C. No. CV 78-4216-R

MEMORANDUM

Appeal from the United States District Court
For the Central District of California
The Honorable Manuel L. Real, Presiding
Argued and Submitted November 4, 1982

Before: GOODWIN, HUG, and BOOCHEVER, Circuit Judges.

Pfister appeals the district court's dismissal of her third amended complaint without leave to amend. She asserts that (1) Judge Lucas abused his discretion by failing to grant her motion to have Judge Real removed from the case; and (2) Judge Real subsequently erred in dismissing her third amended complaint, which she alleges was both substantively sufficient and appropriately filed. We

Pfister argues first that Judge Real's dismissal of her third amended complaint has no legal effect because Judge Lucas erred in failing to grant her motion to have Judge Real replaced. To successfully challenge a judge for bias, a party must file a legally sufficient affidavit indicating that "the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party." 28 U.S.C. Sec. 144. The affidavit is not legally sufficient "unless it specifically alleges facts that fairly support the contention that the judge exhibits bias or prejudice directed toward a party that stems from an extrajudicial source." United States v. Sibla, 624 F.2d 864, 868 (9th Cir. 1980). Pfister's affidavit contends only that Judge Real "sua sponte ordered a status conference and hearing on Defendant's motions to dismiss for June 8, 1981, with only a few days' notice." This allegation affords no indication of extrajudicial bias or prejudice, and we therefore uphold Judge Lucas's denial of Pfister's section 144 motion.

Pfister next contends that Judge Real erred in dismissing her third amended complaint. The major justification for the dismissal of Pfister's third amended complaint was that it failed to allege federal question jurisdiction and a claim for relief arising under federal law which would not be barred by the applicable statute of limitation.

We agree that this action was not timely filed. Wrongful discharge claims brought under the Railway Labor Act constitute federal actions, but their timeliness is governed by the appropriate state statute of limitations. Price v. Southern Pacific Transp. Co., 586 F.2d 750, 752 (9th Cir. 1978). As Pfister concedes, Cal. Civ. Proc. Code Sec. 338, which creates a three-year statute of limitations, is applicable here. See id. at 753 (Sec. 338 applied in similar case in which plaintiff resided and was employed in California, and all pertinent events took place there). Pfister did not file her claim until nearly eight years after her discharge and six years after the union's action in settling the grievance.

Pfister argues that the statute was tolled by the appellees' fraudulent concealment of material facts. Under California law, the existence of such fraudulent concealment, if properly established, causes the applicable statute of limitations to be tolled. Baker v. Beech Aircraft Corp., 39 Cal. App. 3d 315, 321 (1974). However, "the existence of such fraud must be alleged clearly and unequivocally, and must not rest upon inferences." Id.

The allegations of Pfister's complaint would indicate that Pfister may have had a claim for relief in 1972, but they do not indicate that this possible claim was fraudulently concealed from her so as to toll the applicable statute of limitations. This was the third attempt to amend the complaint to state a claim under federal law. There is no indication that there are facts justifying a fourth amendment. It was not an abuse of discretion to dismiss the complaint without further leave to amend.

AFFIRMED.

- APPENDIX D -

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED MAY 16 1983

PAULA E. PFISTER, Plaintiff-Appellant, v. AMERICAN AIRLINES, INC., a corporation, et al., Defendants-Appellees.	No. 81-5550 D.C. No. CV 78-4216-R ORDER

Appeal from the United States District Court for the Central District of California

BEFORE: GOODWIN, HUG, and BOOCHEVER, Circuit Judges

The panel, as constituted in the above case, unanimously voted to deny the petition for rehearing and to reject the suggestion for rehearing en banc.

There has been no pleading of specific acts of fraud in inducing petitioner to enter into an agreement. At oral argument, petitioner appeared to claim that American Airlines had not abided by that agreement. By our affirmance of the dismissal of the federal action, we do not infer one way or the other whether petitioner may have the basis for an action for breach of the settlement agreement.

The full court was advised of the suggestion for an en banc hearing, and no judge of the court requested a vote on the suggestion for rehearing en banc. Fed. R. App. P. 35(b).

The petition for rehearing is denied and the suggestion for a rehearing en banc is rejected.

- APPENDIX E -

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED JUN 10 1983

PAULA E. FFISTER,

Plaintiff/Appellant

vs.

AMERICAN AIRLINES, INC., a corporation; BARBARA BAUER, Stewardess Supervisor/Employee of American Airlines, Inc.; et al.

Defendants/Appellees.

No. 81-5550

DC# CV 78-4216-MLR

ORDER ON MOTION FOR STAY OF MANDATE
(Rule 41 (b) Fed. R.App.P.)

Upon due consideration of appellant's (FISTER) motion for stay of the mandate of this Court in the above cause pending the filing, consideration and disposition by the Supreme Court of the United States of a petition for writ of certiorari, such petition to be filed in the Clerk's office of the Supreme Court of the United States on or before June 16, 1983

IT IS ORDERED that the motion for stay of mandate be, and the same is hereby GRANTED .+

PROCTOR HUG, JR.
United States Circuit Judge

+ In the event that the motion for stay of mandate and the petition for writ of certiorari are granted, then this stay will continue pending the final disposition of the case by the Supreme Court of the United States.

- APPENDIX P -

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED JUN 23 1983

PAULA E. PFISTER,

Plaintiff-Appellant,

v.

AMERICAN AIRLINES, INC., a corporation; BARBARA BAUER, Stewardess Supervisor/Employee of AMERICAN AIRLINES, INC.; IRVING CURHAN, Director of Flight Service/ Employee of AMERICAN AIRLINES, INC.; AIR LINE STEWARDS AND STEWARDESSES ASSOCIATION, TRANSPORT WORKERS UNION LOCAL 550/552, AFL-CIO,

Defendants-Appellees.

No. 81-5550

DC# CV 78-4216-R Central California

O R D E R

Before: GOODWIN, HUG, and BOOCHEVER, Circuit Judges

Appellant's motion for a further stay of the mandate is granted. The mandate is stayed pending filing of a petition for certiorari in the Supreme Court on or before July 30, 1983.

BY ORDER OF THE COURT:
Phillip B. Winberry
Clerk of Court

by: (signatured)
PATRICK FISHER
Deputy Clerk

- APPENDIX G -

STATUTES INVOLVED:

California Code of Civil Procedure Sec. 338(1)(4)

" Sec. 338. Three years; statutory liability; exception; trespass of injury to realty; taking, detaining or injuring goods or chattels; fraud or mistake; bond of public official; notary public; slander of title; false advertising; water quality and hazardous wastes.

Within three years:

1. An action upon a liability created by statute, other than a penalty or forfeiture ...

4. An action for relief on the ground of fraud or mistake. The cause of action in that case is not to be deemed to have accrued until the discovery, by the aggrieved party, of the facts constituting the fraud or mistake."

CPLR of New York, Section 213

"Sec. 213. Actions to be commenced within six years: where not otherwise provided for; on contract; on sealed instrument; on bond or note, and mortgage upon real property; by state based on misappropriation of public property; based on mistake; by corporation against director, officer or stockholder; based on fraud.

The following actions must be commenced within six years:

1. an action for which no limitation is specifically prescribed by law . . .

8. an action based upon fraud; the time within which the action must be commenced shall be computed from the time the plaintiff or the person under whom he claims discovered the fraud, or could with reasonable diligence have discovered it."

- APPENDIX H -

CONSTITUTIONAL PROVISION:

AMENDMENT V -- United States Constitution

" No person shall be ... deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation."

- APPENDIX I -

October 25, 1982

CLERK, U. S. COURT OF APPEALS
FOR THE NINTH CIRCUIT
7th & Mission Streets
San Francisco, California 94101

Re: EMERGENCY CONTINUANCE
Pfister vs. American Airlines, Inc., et al.
D.C. No: CV 78-4216
Appeal No: 81-5550.

Dear Clerk:

Enclosed please find my Emergency Motion for Continuance; Declaration of Appellant Paula E. Pfister.

I am informed that a Merits Panel has not yet been appointed on my cause and am requesting that this document be forthwith presented to the Court for immediate disposition and attention since I am without counsel to assist me at this time.

Thank you for your prompt attention to this most important matter.

Very truly yours,

Paula E. Pfister
Appellant.

cc: Files (6)

ENCLOSURE: Motion for Emergency Continuance;
Declaration of Paula E. Pfister.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PAULA E. PFISTER, Plaintiff/Appellant, vs. AMERICAN AIRLINES, INC., et al., Defendants/Appellees.	) C.A. No: 81-5550) D.C. No: CV 78-4216-F and R)) EMERGENCY MOTION FOR CONTINUANCE; DECLARATION OF APPELLANT PAULA E. PFISTER.)

COMES NOW Appellant, PAULA E. PFISTER, in her own behalf, pursuant to the Federal Rules of Appellate Procedure and Local Rules of this Court, and does respectfully pray that an Order issue Continuing the Oral Hearing on the subject Appeal denominated hereinabove, scheduled for oral hearing on November 4, 1982 for a period of Twenty (20) days, up to and including the 24th day of November 1982.

In support of said Motion, Appellant respectfully shows the following Declaration attached herewith as EXHIBIT "A".

WHEREFORE, Appellant respectfully prays that an Order issue continuing the subject Oral Hearing until a period of Twenty (20) days, up to and including November 24, 1982, and for such further and alternative relief the Court may deem necessary in light of the circumstances.

Appellant specifically demands an Oral Hearing on the instant Appeal and states that said oral argument is essential to the proper adjudication of her rights before this Court.

DATED: October 25, 1982

Respectfully submitted:

BY: Paula E. Pfister

PAULA E. PFISTER
Appellant.

P. O. Box 67382
Century City Station
Los Angeles, CA 90067-0382

DECLARATION OF PAULA E. PFISTER

I, the undersigned, declare and state as follows:

1. That I am the plaintiff in Case No: CV 78-4216 and the appellant in the instant Appeal No: 81-5550.

2. That my rights have been substantially impaired and offended by this Court's actions in denying me the right to be represented by counsel of my choice.

3. That various papers and motions, and the like, filed by me and my counsel were summarily rejected, thereby causing me further harm and injury.

4. That I have been seeking to secure additional counsel in light of the refusal of this Court to allow Mr. Eugene Carella to represent my interest on appeal.

5. That Attorney Carella is well-conversant with all the facts, law and circumstances surrounding the instant litigation and appeal.

6. That at the present time I have been unable to obtain appellate counsel, but am confident that I will secure same within the next fourteen (14) days.

7. That it is imperative and essential to my cause that I be afforded oral hearing on the substance and merits of my Appeal.

8. That I am being prejudiced by being compelled by this Court to proceed on my own behalf and by having my counsel willfully denied access on my behalf.

9. That a Merits Panel for the subject Appeal has not yet been appointed or announced as of this date.

10. That no prejudice or harm can come to any of the Appellees by granting the subject Continuance to enable me to secure additional counsel.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and ability.

Executed on this 25th day of October 1982 in Los Angeles, California.

Paula E. Pfister

PAULA E. PFISTER

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that I served a true copy of the within Motion for Emergency Continuance; Declaration of Paula E. Pfister on all parties of record on this the_____day of October 1982 by first class mail, postage-prepaid, in Los Angeles, California, on the following:

Brill & Hunt
1000 Wilshire Centre Building
3055 Wilshire Boulevard
Los Angeles, California 90010

James L. Marable
Fogel, Julber, Reinhardt, Rothschild
& Feldman
5900 Wilshire Boulevard
Suite 2600
Los Angeles, California 90036

Paula E. Pfister

- APPENDIX J -

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

OCT 28 1982

PHILLIP B. WINBERRY
CLERK, U.S. COURT OF APPEALS

PAULA E. PFISTER,

Plaintiff and Appellant,

vs.

AMERICAN AIRLINES, INC., a corporation; BARBARA BAUER, Stewardess Supervisor/Employee of AMERICAN AIRLINES, Inc., et al.,

Defendants and Appellees.

No. 81-5550

D.C. No. CV 78-4216-R

ORDER

Upon due consideration, the Court makes the following orders:

(1) Appellant's emergency motion for continuance of oral argument is denied;

(2) The appeal will remain on calendar for Thursday, November 4, 1982, in Los Angeles; and

(3) Appellant may appear at oral argument pro se, or she may submit on the briefs.

FOR THE COURT:

PHILLIP B. WINBERRY
Clerk of Court

Roger T. Ritter

By: Roger T. Ritter
Senior Deputy Clerk

- APPENDIX K -

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PAULA E. PFISTER, Plaintiff-Appellant, vs. AMERICAN AIRLINES, INC., et al., Defendant-Appellees.	)	C.A. No: 81-5550 D.C. No: CV 78-4216-R APPELLANT'S MOTION TO STRIKE APPELLEES' DESIGNATION OF CLERK'S RECORD FOR FRAUD; AND IMPOSITION OF SANCTIONS.

COMES NOW Appellant, PAULA E. PFISTER, pursuant to the Federal Rules of Appellate Procedure, and does respectfully pray an Order issue from this Court striking Appellees' AMERICAN AIRLINES, INC, et al. and AIR LINE STEWARDS AND STEWARDESSES ASSOCIATION, TRANSPORT WORKERS UNION, LOCAL 550/552, AFL-CIO's Designation of Clerk's Record for Fraud and because of the untimeliness of said Designation filed on September 22, 1982. In support of said Motion, Appellant respectfully shows the Court as follows:

1. That Appellees have demonstrated continuing willfulness and contempt for the Rules of this Court and Federal Rules of Appellate Procedure in the processing of this Appeal.

2. That although Appellees solicited extensions of time to file their brief -- and, in particular, Appellee UNION -- said Appellee UNION did not timely file a brief.

3. That said Appellee UNION filed a purported Adoption of Appellee AMERICAN's brief approximately three (3) weeks after they were to file same and after Appellant PFISTER filed her Notice of Non-Receipt of Appellee's brief.

4. That Appellee's Brief was also deficient in not having complied with Local Rule 13(e) regarding a Certificate of Interested Parties.

5. That again, Appellant PFISTER on August 23, 1982 -- three (3) weeks after said Certificate of Interested Parties was required to be filed by Appellees -- had to move this Court to Compel Appellees to Comply with the proper local rules of court or to Strike said Brief.

6. That the final straw is the latest attempt by Appellees AMERICAN AIRLINES, INC., et al. and UNION to cure gross deficiencies in the discharge of their responsibilities by seeking to now file a designation of clerk's record -- two (2) months after it should have been properly filed with the Clerk of the District Court.

7. It is further stated that Appellant PFISTER has performed all of her responsibilities in this regard properly on May 28, 1982.

8. That not only is said Appellees' Designation of Clerk's Record two (2) months tardy, but it contains material

and fabricated designations which did not exist in the Clerk's Record and are the product of fraud and fabrication perpetrated by Appellees -- and, in specific, Appellant states that at no time did she ever receive a purported 'minute order' identified as Document No. 41 or a purported 'minute order' filed on June 1, 1981 identified as Document No. 43.

9. That Appellant respectfully shows this Court that said purported Orders are spurious and further calculated and designed to mislead and misrepresent to this Court the true nature of what occurred.

10. That Appellant also moved this Court for an Order to Cure material alterations in the Reporters' Transcripts which was denied, notwithstanding that said relief is available in this Court, and said Motion to Cure was UNOPPOSED by any of the Appellees and thereby deemed admitted.

11. That Appellant specifically states that neither she nor her legal counsel at any point in time ever received any copy of Document No. 41 or Document No. 43.

12. That Appellant specifically states that on September 24, 1982 the Clerk of the U. S. District Court, Appellate Department, informed said Appellant that said Document identified as No. 41 in Appellees' Designation was 'missing' from the Record and that she could not explain where it was or if it even existed.

13. That this Court should not abide such blatant and gross abuses of the appellate processes by said Appellees and should strike said Designation of the Clerk's Record by Appellees and further must impose sanctions upon said Appellees for continuing and willful abuses of these appellate proceedings.

14. That this concerted action by Appellees be ordered to stop and that the merits of the within proceedings be addressed according to law.

WHEREFORE, on the basis of the foregoing premises, Appellant respectfully prays an Order issue from this Court Striking Appellees' Designation of Clerk's Record for Fraud and to otherwise impose sanctions upon Appellees for their continuing and willful disregard for the Rules of this Court and Federal Rules of Appellate Procedure and for their participation in seeking to thwart the appellate processes; and for such further relief this Court deems necessary in light of these circumstances.

DATED: September 25, 1982

Respectfully submitted:

BY: Paula E. Pfister

PAULA E. PFISTER, Appellant
P. O. Box 67382
Century City Station
Los Angeles, CA 90067-0382

CERTIFICATE OF SERVICE

I hereby certify that I served a true copy of the foregoing Appellant's Motion to Strike Appellees' Designation of Clerk's Record for Fraud; and Imposition of Sanctions on all parties of record by first class mail, postage-prepaid, on this the_____day of September 1982 in Los Angeles, California, on the following:

Brill, Hunt & Debuys
Suite 1000 Wilshire Centre Building
3055 Wilshire Boulevard
Los Angeles, California 90010

Fogel, Julber, Reinhardt, Rothschild
& Feldman
5900 Wilshire Boulevard, Suite 2600
Los Angeles, California 90036

Paula E. Pfister

APPENDIX L

FILED

OCT 28 1982

PHILLIP B. WINBERRY
CLERK, U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

PAULA E. PFISTER,

Plaintiff and Appellant,

vs.

AMERICAN AIRLINES, INC., a corporation; BARBARA BAUER, Stewardess Supervisor/Employee of AMERICAN AIRLINES, Inc., et al.,

Defendants and Appellees.

No. 81-5550

D.C. No. CV 78-4216-R

ORDER

Upon due consideration, the Court makes the following orders:

(1) Appellant's emergency motion for continuance of oral argument is denied;

(2) The appeal will remain on calendar for Thursday, November 4, 1982, in Los Angeles; and

(3) Appellant may appear at oral argument pro se, or she may submit on the briefs.

FOR THE COURT:

PHILLIP B. WINBERRY
Clerk of Court

Roger T. Ritter

By: Roger T. Ritter
Senior Deputy Clerk

- APPENDIX M -

May 22, 1983

Clerk, U. S. COURT OF APPEALS
FOR THE NINTH CIRCUIT
Seventh & Mission Streets
San Francisco, California 94101

Re: Paula E. Pfister vs. American Airlines, Inc., Et Al.
APPEAL NO: 81-5550 (TRANSCRIPTS)

Dear Clerk:

I am respectfully requesting a Transcript of the Oral Hearing held on the above-stated Appeal before Circuit Judges Boochever, Hug and Goodwin on November 4, 1982, held in Los Angeles, California, where I was forced to appear on my own behalf, and that it be prepared by the appropriate court reporter and made available to me and made a part of the Record on Appeal in the instant matter, inasmuch as I will be filing writs with the U. S. Supreme Court relating to the subject Appeal as soon as I am able to obtain additional legal counsel.

Kindly advise me at once as to the cost associated with the transcripts and expedite this request at your earliest convenience.

Very truly yours,

PAULA E. PFISTER

P. O. Box 67382
Century City Sta.
Los Angeles, CA 90067-0382

APPELLANT.

cc: Files (7)
RC

- APPENDIX N -

Office of the Clerk
United States Court of Appeals for the Ninth Circuit
U.S. Court of Appeals and Post Office Building
7th & Mission Streets, P.O. Box 547
San Francisco, California 94101

Phillip B. Winberry
Clerk of Court

(415) 556-7340

June 7, 1983

11-4-82
81-5

Ms. Paula E. Pfister
P.O. Box 67382
Century City Station
Los Angeles, CA 90067-0382

Dear Ms. Pfister,

This reply is in response to your letter dated May 22, 1983.

No transcripts are made of oral arguments. Arguments are tape-recorded for the use of the Court and do not represent an official record of the proceedings.

Members of the public may, after adequate advance request, have a stenographer prepare a written transcript from the tape and/or listen in the Clerk's office to these recordings.

Tapes are destroyed after the Court's final judgment has been entered. Judgment in your case issued on January 5, 1983.

Information regarding the tapes of your case can be obtained by contacting our Los Angeles office at (213) 688-3635 or you can write them at:

U.S. Court of Appeals
Office of the Clerk
1699 U.S. Courthouse
312 N. Spring Street
Los Angeles, CA 90012

Very truly yours,

Patrick Fisher
Deputy Clerk

by:

James Marshall
Law Student Assistant

- APPENDIX O -

Office of the Clerk
United States Court of Appeals for the Ninth Circuit
U.S. Court of Appeals and Post Office Building
7th & Mission Streets, P.O. Box 547
San Francisco, California 94101

Los Angeles Office:
Room 1009
United States Courthouse
312 North Spring Street
Los Angeles, California 90012

June 9, 1983

Ms. Paula E. Pfister
Post Office Box 67382
Century City Station
Los Angeles, California 90067-0382

Dear Ms. Pfister:

This letter is being written in response to your request for the tape of your oral argument which took place on November 4, 1982. The tape isn't in our office at this time and efforts are being made to locate it. Once, the tape has been forwarded to our office you will be contacted immediately.

We regret the error and hope that it hasn't inconvenienced you in any way.

Very truly yours,

Debra Mayfield

Debra Mayfield
Deputy Clerk

- APPENDIX P -

June 17, 1983

Ms. Deborah Mayfield
CLERK'S OFFICE
U. S. COURT OF APPEALS
FOR THE NINTH CIRCUIT
312 North Spring St.
Los Angeles, California 90012

Attention: Winifred Taylor, Sr. Clerk

Re: Pfister vs. American Airlines, Inc.
Et Al.
APPEAL NO: 81-5550 (TRANSCRIPTS)

Dear Ms. Mayfield:

On June 9, 1983 I personally visited your offices at the Court House to listen to the tapes of the Oral Argument held on November 4, 1982 and to have a stenographer transcribe same. This was done immediately after I received a letter from the Office of the Clerk stating that I could do so, which was in response to my letter of request for the subject transcripts. When I came to your office on June 9, 1983 you informed me that the tapes were "missing" and that after a few phone calls you implied that one of the judges were in possession of the tapes and that I was to call you in one (1) week to secure same after you retrieved them.

Please inform me at once by letter as to the whereabouts of these tapes and whether you have them now in your possession since noone signed these tapes out. As you know, this is actual evidence, since I was forced to appear on my own behalf to present oral argument and my attorney was taken off my case leaving me on my own and I was not granted a continuance to secure additional counsel. Therefore, at no point in time, should these tapes disappear or go anywhere and must remain a permanent part of the Record. No mandate has issued in this case. As you know, a mandate does not issue for 21 days and I filed a Petition for Rehearing in fourteen (14) days thereby staying the mandate in this case.

I will look forward to hearing from you at your earliest convenience. I am taking this up on a Writ to the Supreme Court and need these transcripts for my presentation, so time is of the essence that you secure these. It is absolutely necessary that I be afforded these tapes so I can prepare this writ.

Neither you nor Ms. Winifred Taylor, your superior, indicated that there was any problem in securing same.

Thank you for your prompt and immediate attention to this most important matter.

Very truly yours,

/s/

PAULA E. PFISTER

APPELLANT-PETITIONER

P. O. Box 67382
Century City Sta.
Los Angeles, CA 90067-0382

cc: Files (4)
RC

NOTE: The judges based their decision on the Rehearing Petition mentioning the oral argument, which decision came down in the middle of May 1983.

- APPENDIX Q -

Office of the Clerk
United States Court of Appeals for the Ninth Circuit
U.S. Court of Appeals and Post Office Building
7th & Mission Streets, P.O. Box 547
San Francisco, California 94101

Los Angeles Office:
Room 1009
United States Courthouse
312 North Spring Street
Los Angeles, California 90012

June 20, 1983

Miss Paula Pfister
Post Office Box 67382
Century City Station
Los Angeles, California 90067-0382

Re: No. 81-5550 Pfister v. American Airlines, Inc.

Dear Miss Pfister:

We have your letter of June 17, 1983, inquiring about the tape of the oral argument in the above-entitled case.

We wrote to Mr. Carella last Wednesday advising him that the tapes have been erased.

We are enclosing herewith copies of pages 27 and 28 of the Ninth Circuit Internal Operating Procedures. As you will see, tapes are destroyed after the final judgment has been entered. The final judgment was issued in your case on January 5, 1983, so it is entirely appropriate that the tape has been erased.

We regret the inconvenience this has caused you.

Yours very truly,

PHILLIP B. WINBERRY
Clerk of Court

By: Winifred D. Taylor
Senior Deputy Clerk

- APPENDIX R -

Office of the Clerk
United States Court of Appeals for the Ninth Circuit
U.S. Court of Appeals and Post Office Building
7th & Mission Streets, P.O. Box 547
San Francisco, California 94101

Los Angeles Office:
Room 1009
United States Courthouse
312 North Spring Street
Los Angeles, California 90012

June 15, 1983

Eugene J. Carella, Esq.
Post Office Box 67292
Century City Station
Los Angeles, California 90067-0292

Re: No. 81-5550 Paula Pfister v. American Airlines

Dear Mr. Carella:

The tape of the oral argument in the above-entitled case has been erased.

These tapes are made for the use of the judges of the court and once an opinion has come down they are not too likely to need the tapes. However, as a precaution we do retain them until the mandates issue.

Periodically we receive a list of cases in which the mandates have issued. Such a list indicated that the mandate in this case had issued on January 19, 1983, and we, therefore, erased the tape. The mandate must have been subsequently withdrawn, as we were given the information over the telephone that it had not issued as a petition is pending. We, naturally, did not question the information we received from the computer and erased the tape prior to last week.

Yours very truly,

PHILLIP B. WINBERRY
Clerk of Court

Winifred D. Taylor

By: Winifred D. Taylor
Senior Deputy Clerk

- APPENDIX S -

June 25, 1983

Phillip B. Winberry
Clerk of Court
Office of the Clerk
U. S. Court of Appeals
for the Ninth Circuit
7th & Mission Streets
San Francisco, California 94101

Attention: Winifred D. Taylor
Senior Deputy Clerk

Re: PFISTER VS. AMERICAN AIRLINES, INC., ET AL.
APPEAL NO: 81-5550

Dear Mr. Winberry:

This letter is in response to your June 20, 1983 letter to me, the Appellant, in the above-named case.

I am appalled and outraged that I was not afforded any notice of your "erasing" evidence and my tapes requested of your office and which tapes and were represented to me by yourself and your office as being available in May 1983. Also, the panel themselves refer to the oral argument in their May Order and had these transcripts readily available at that time. I was forced to proceed "IN PRO PER" in this matter, as you are well aware, and Mr. Carella was not on this case and was, in fact, illegally, improperly, and unethically removed to prevent me from having representation in this matter. I was denied a short continuance to obtain new and additional counsel for my oral argument and my cause. These tapes demonstrate beyond cavil that the evidenced adduced at the time of oral argument by me and in response to questioning by the Panel that the discovery of these causes of actions did not take place "until approximately 1978" and is direct evidence presented by me as the plaintiff-appellant. The defense counsel provided no input or adequate response to my allegations and were "wanting", to say the least.

I have been defrauded in this case and harmed substantially by the events that have been taking place and feel that there is a serious obstruction of justice being perpetrated by various members of the Court and your Office, which is irreparable and continuing and outside the scope of law and am astonished that this type of conduct can take place here in our country and with your participation in this obstruction and destruction of material evidence.

Your attempt to make this sound like a normal, everyday occurrence does not take too well and has caused me a great deal of distress and sickness.

If this is not corrected forthwith I am commending this entire matter for investigation by various individuals who oversight this type of over-reaching and abuse.

Thank you for your attention to this matter.

Very truly yours,

PAULA E. PFISTER

APPELLANT - IN PRO PER

P. O. Box 67382
Century City Sta.
Los Angeles, CA 90067

cc: Files (4)
RC

P. S. I am sure that Ms. Winifred Taylor would have known that these tapes were purportedly 'erased' when I was down at her office personally on June 9, 1983 to listen to them and have them transcribed. They indicated to the contrary and only indicated that they were "missing".

cc: Ms. Winifred D. Taylor
OFFICE OF THE CLERK
U. S. Courthouse
312 No. Spring Street
Los Angeles, CA 90012

- APPENDIX T -

EUGENE JOHN CARELLA, ESQ.
P. O. Box 67292
Century City Station
Los Angeles, California 90067

(213) 822-8428

FILED
On Demand
MAR 3 1981
CLERK, U. S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

PAULA E. PFISTER,

Plaintiff,

vs.

AMERICAN AIRLINES, INC., a Corporation,

vs.

BARBARA BAUER, Stewardess Supervisor/Employee of AMERICAN AIRLINES, INC.

vs.

IRVING CURHAN, Director of Flight Service/Employee of AMERICAN AIRLINES, INC.

vs.

AIR LINE STEWARDS AND STEWARDESSES ASSOCIATION, TRANSPORT WORKERS UNION LOCAL 550/552, AFL-CIO.

Defendants.

CIVIL ACTION NO. 78 4216 F(Gx)

THIRD AMENDED COMPLAINT TO RECOVER DAMAGES FOR BREACH OF THE COLLECTIVE BARGAINING AGREEMENT; INTENTIONAL AND NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS AND MENTAL ANXIETY; FRAUD, MISREPRESENTATION AND DECEIT; TORTIOUS INTERFERENCE WITH A FIDUCIARY RELATIONSHIP; BREACH OF THE DUTY OF FAIR REPRESENTATION AND THE FIDUCIARY DUTY TO ACT IN GOOD FAITH; AND INTERFERENCE WITH AN ADVANTAGEOUS RELATIONSHIP AND PROSPECTIVE ADVANTAGE; WILLFUL BREACH OF STATUTORY BILL OF RIGHTS.

THIRD AMENDED COMPLAINT

COMES NOW, the Plaintiff, PAULA E. PFISTER, by counsel-of-record, and, in support of her Third Amended Complaint against each of the Defendants named herein, states and alleges as follows:

COUNT I

1. The Plaintiff is and at all material times mentioned herein has been a citizen and domiciliary of the County of Los Angeles and the State of California.

2. Defendant AMERICAN AIRLINES, INC., is incorporated in the State of New York and maintains its principal place of business in New York City, New York, and transacts business in the State of California and the County of Los Angeles.

3. Defendant BARBARA BAUER is or was at all material times alleged herein a Stewardess Supervisor and Employee of Defendant AMERICAN AIRLINES, INC. and is a citizen and domiciled in the State of California, sworn to by her.

4. Defendant IRVING CURHAN is or was at all material times alleged herein Director of Flight Service and an Employee of Defendant AMERICAN AIRLINES, INC. and is a citizen of the State of New York, and was a citizen and domiciliary of the State of California at the time many of the material transaction which constitute the basis of this lawsuit occurred.

5. Defendant AIR LINE STEWARDS AND STEWARDESSES ASSOCIATION, TRANSPORT WORKERS UNION LOCAL 550/552, AFL-CIO, is and at all material times alleged herein was an unincorporated labor association whose principal offices are found in a state other than California, but who maintained duly authorized officers and/or agents in the State of California, representing the Plaintiff and other Union members like her, at the time of the transactions alleged by the Plaintiff forming the basis

of this lawsuit, and aforesaid Defendant UNION otherwise transacts and/or transacted business in the State of California.

6. This Court's jurisdiction is founded upon 28 USC Sections 1331 and 1337 and is invoked in accordance with the provisions of 45 USC Section 151, et seq., as made applicable by 45 USC Section 181, hereinafter the Railway Labor Act; and 29 USC Section 411, 412.

7. The matter in controversy includes, exclusive of interest and costs, a gross sum of Ten Thousand Dollars ($10,000), and Plaintiff further asserts and invokes this Court's pendant jurisdiction over all appropriate Federal and state causes of action herein alleged.

8. On or about June 1965, the Plaintiff was solicited and recruited by Defendant AMERICAN AIRLINES, INC. (hereinafter AMERICAN) and became employed by AMERICAN as a Flight Attendant.

9. That at or about the same time pursuant to the provisions of the Collective Bargaining Agreement (hereinafter "Agreement") between AMERICAN and the Defendant Local Union 550/552 (hereinafter Defendant "UNION"), Plaintiff was compelled to become a member in aforenamed Defendant UNION as a prerequisite to the discharge of her duties for Defendant AMERICAN.

10. That on or about June 1970 the Plaintiff, possessed of an impressive and dedicated record of flight service for Defendant AMERICAN was improperly, summarily, and with premeditated malice aforethought discharged by the Defendant AMERICAN at the insistance, urgings and approval of Defendants and

thru the agency of the aforesaid Defendants BARBARA BAUER and IRVING CURHAN, hereinafter Defendant BAUER and CURHAN, Plaintiff's Supervisor and Supervisor of Flight Service respectively.

11. Plaintiff alleges said termination was undertaken by aforesaid Defendants CURHAN, BAUER and AMERICAN with vindictiveness and malice and was further motivated by bad faith and without cause and with the intent to injure, annoy and vex the Plaintiff, and to destroy her rights under the Agreement.

12. Defendants, and each of them, at all times material herein, were the Agents and/or Employees of their Co-Defendants and were acting within the scope and authority of aforesaid agency and with the permission, knowledge and approval of the Co-Defendants.

13. That at all times material herein, Plaintiff faithfully and properly performed and discharged all duties required of her by aforenamed Defendants and Agreement.

14. Plaintiff further alleges that pursuant to the appropriate provisions of the Agreement in existence at the time she was terminated, a grievance was timely and properly initiated against aforenamed Defendants AMERICAN, BAUER and CURHAN; and that the Plaintiff otherwise complied fully with the conditions requisite for prosecuting aforesaid grievance.

15. On or about November 1972, as an inducement to the Plaintiff and as a method for inducing the Plaintiff to conclude and otherwise dismiss her grievance and complaint against

Defendant AMERICAN and surrender her rights under the Collective Bargaining Agreement. Defendant AMERICAN apprised the Plaintiff of a settlement proposition, which, if accepted by the Plaintiff, would have deleted all false, disparaging and otherwise damaging information concerning the Plaintiff's improper termination from the Defendant AMERICAN's personnel files still being communicated by AMERICAN and would otherwise permanently expugn said false, defamatory, and scurrilous data. Further, that said false and damaging information would not be transmitted or otherwise imparted to any other third party seeking information from Defendant AMERICAN--including prospective employers--with respect to any of the Plaintiff's work history, employment and personnel record, or the like.

16. The Plaintiff, suffering from substantial economic deprivation caused by the adverse and improper information transmitted by aforesaid Defendant AMERICAN regarding her employment history and improper dismissal, and under further economic pressure and duress because the Defendant UNION had abandoned, in bad faith, her grievance against said Defendant AMERICAN and refused to prosecute aforesaid grievance at the insistence and direction of Defendant AMERICAN--knowing it to be meritorious and in derogation of their duty of fair representation to the Plaintiff--the Plaintiff was forced to acquiesce against her will to the terms of aforesaid settlement proposition advanced by Defendant AMERICAN and to completely surrender and forfeit all her rights contained in aforesaid Agreement.

17. That as a direct and proximate result of the acts

of Defendants alleged herein, the Plaintiff was disenfranchised of all of her rights and remedies under the Collective Bargaining Agreement in existence and was otherwise prevented from carrying forward the prosecution of her claim for reinstatement and back pay as provided for in the Collective Bargaining Agreement.

18. The Plaintiff further alleges that said acts of the Defendants were undertaken with their awareness of her peculiar susceptibility to them, further amplifying the harm and damage sustained by her, intentionally concealed from her.

19. Plaintiff further states that as a direct and proximate cause of the Defendants' actions and knowingly and willfully breaching its Collective Bargaining Agreement, that she has sustained severe and substantial emotional and mental harm and anguish.

WHEREFORE, the Plaintiff respectfully prays for damages as follows:

1. For general damages in an amount of Five Hundred Thousand Dollars ($500,000).

2. For medical and related expenses in an amount to be ascertained and inserted by amendment herein.

3. For loss of collective bargaining rights in an amount of at least One Hundred and Fifty Thousand Dollars ($150,000).

4. For back pay and loss of benefits in an amount to be ascertained and inserted.

5. For exemplary and punitive damages on account of Defendants' willful and vanton breach of the agreement in an amount of Five Hundred Thousand Dollars ($500,000); and

6. For costs of suit and for such other and further relief as the Court may deem appropriate.

COUNT II

1. The Plaintiff realleges each and every allegation contained in Count I as though fully alleged herein in support of Count II. Further, each and every allegation of Count II herein is to be regarded as having been alleged in support of Count I.

2. That Defendant AMERICAN as an active inducement for Plaintiff to accept aforesaid settlement agreement and thereby irrevocably forfeit and waive said rights under the Agreement agreed to communicate only positive information to any inquiry initiated by any third party prospective employer or other, said information justified by the facts of Plaintiff's employment and vas to further remove any statements concerning or relating to Plaintiff's unjustified dismissal by Defendant AMERICAN and to further refrain from its slanderous and damaging conduct of stating that Plaintiff was a "dishonest" employee and an "unworthy employee" and othervise an employment risk.

3. Plaintiff further alleges that Defendant AMERICAN in violation of its aforesaid duty undertaken to her, secured by fraud and duress, have made, and continue to make, inten-

tional, grossly reckless and malicious statements unvarranted concerning the Plaintiff's background, work performance history with aforesaid Defendants--damaging to her personal and business reputation and character and in callous disregard of the Plaintiff's well-being and for the purpose of causing the Plaintiff to suffer humiliation, grief, mental anxiety, and emotional and physical distress.

4. The Plaintiff has advised Defendant AMERICAN that it should refrain from its oppressive, willful and vanton conduct in distributing, and othervise causing to be distributed, false and malicious statements to prospective employers of the Plaintiff, including other major airline carriers, to wit: Trans World Airlines, Continental Airlines, Western Airlines, United Airlines, and the like, but the Defendants refuse--and continue to refuse--to refrain from aforesaid conduct, mindful of the Plaintiff's peculiar susceptibility to their conduct and acts thereby knowingly amplifying and expanding the emotional and mental harm sustained by the Plaintiff--all in conscious disregard of the consequences of their duty to the Plaintiff.

5. Plaintiff further alleges that the aforesaid acts committed by the Defendants are outrageous and substantial in nature, continuing in duration, and have been committed within one (1) year from the date of filing the within Complaint and otherwise, together with the causes of action therein, have been willfully concealed from the Plaintiff by the Defendants' willful and intentional acts preventing their

discovery until one (1) year from the filing of the within Complaint.

6. Plaintiff, by way of specific allegation, avers that the Defendants are bound by the Appeals Board Decision No. 70-5019 and have accepted its findings, identified as Exhibit "B" and attached herevith, indicating that the Plaintiff's dismissal by Defendant AMERICAN was improper and othervise without cause. This notvithstanding, the Defendant AMERICAN has stated to prospective employers that Plaintiff was "a personnel problem"; was never employed by AMERICAN for the five (5) years she was; and was othervise unsuitable for an airline position and is "dishonorable" and "dishonest" and could not be trusted for employment purposes, and other such disparaging statements.

7. As a proximate result of the acts alleged herein, the Plaintiff has sustained substantial and severe personal and professional humiliation, mental torment and anxiety, as well as emotional and physical harm and distress; and has been injured in her mind and body so that she nov suffers and complains of nervous tension, fatigue, irritability, and othervise suffers from said emotional distress which is manifesting itself as a severe and unalterable anxiety neurosis--all to the Plaintiff's general damage and detriment in the amount of Five Hundred Thousand Dollars ($500,000).

8. That as further direct and proximate result of the acts committed by the Defendants as alleged herein, the Plaintiff requires medical attention for the effects of aforesaid Defendants' conduct maliciously undertaken by them with an intent to injure, annoy, vex and harm the Plaintiff in the manner nov experienced by her.

9. As a further direct consequence of the Defendants' aforesaid conduct as stated herein, the Plaintiff was prevented from attending to and carrying forward her customary vocational activities and pursuits as an airline flight attendant and/or flight supervisor, and has sustained loss of earnings thereby in a sum of approximately One Hundred and Twenty Thousand Dollars ($120,000) and has sustained damage to this extent herein.

10. The Plaintiff is informed and believes, and based upon said information, further states that she will continue to be prevented from attending to her former usual occupation in the future if the alleged acts of Defendants are permitted to continue undeterred and unpunished as they exist up and to the present date.

11. The Plaintiff states that the acts of Defendants alleged herein and each of them were willful, wanton, malicious, oppressive and were undertaken to injure, annoy, vex and otherwise harm and irrevocably destroy and damage the Plaintiff's personal and business reputation, as well as her vocational pursuits, and to otherwise cause her suffering and emotional harm entitling the Plaintiff to an award of punitive damages in the sum of Five Hundred Thousand Dollars ($500,000).

WHEREFORE, the Plaintiff respectfully prays for damages as follows:

1. For general damages in an amount of Five Hundred Thousand Dollars ($500,000).

2. For medical and related expenses in an amount to be ascertained and inserted by amendment herein.

3. For loss of earnings based on present and future computations in an amount of at least One Hundred and Fifty Thousand Dollars ($150,000).

4. For exemplary and punitive damages in an amount of Five Hundred Thousand Dollars ($500,000); and

5. For costs of suit and for such other and further relief as the Court may deem appropriate.

COUNT III

1. Each and every allegation averred by the Plaintiff in Counts I and II is realleged in support herein of Count III. Further, each and every allegation of Count III shall be regarded as having been alleged in support of Counts I and II.

2. On or about November 1972 Defendant AMERICAN falsely and fraudulently represented to the Plaintiff pursuant to the terms of their agreement whereby Plaintiff was induced to settle and conclude her claim against Defendant AMERICAN forfeiting all rights under collective bargaining, that said Defendant Employer would reflect and communicate only positive information concerning the Plaintiff's employment history, background, job performance, and other aspects of her employment relationship with Defendant AMERICAN consistent with her excellent personnel record developed by her.

3. Defendants' representations were, in fact, false.

4. When Defendant AMERICAN made said representations that it would disseminate and reflect only positive work experience information concerning Plaintiff's personnel history with Defendant AMERICAN, said representations were made by Defendant AMERICAN with the intent to defraud and deceive the Plaintiff and to induce and influence the Plaintiff to act in the manner alleged herein, not in her best interest, and otherwise causing the Plaintiff to irrevocably forfeit rights available to her under the collective bargaining agreement.

5. At the time Defendant AMERICAN made said representations to the Plaintiff that they would only reflect positive personnel information concerning her employment history with them and they would make no reference to her dismissal, but would indicate that she had left voluntarily of her own choosing due to the improper termination of the Plaintiff from the Defendant's employ, the Defendant AMERICAN had no intention of ever performing or fulfilling said representations to her.

6. The Plaintiff at the time said representations were made by the Defendants was ignorant of the falsity of Defendants representations and believed them, justifiably, to be true; and by justifiably relying upon said representations, Plaintiff was fraudulently induced to and did, in fact, waive and forfeit irrevocably her rights and remedies provided by the collective bargaining provisions governing her cause and otherwise forfeited and relinquished various statutory rights available to her under existing Federal labor statutes affording her a claim of relief and causes of action against the Defendants AMERICAN, BAUER and CURHAN.

7. That if Plaintiff knew and was apprised of the actual facts, she would not have taken the acts and commenced upon the course of conduct she ultimately undertook because her motivation into entering said fraudulent agreement was to eliminate and otherwise erase the harm and stigma caused by Defendants AMERICAN, BAUER and CURHAN's injurious statements concerning her employment suitability and employment history--which effectively prevented her from securing employment in her normal occupation for a period subsequent to her termination.

8. Plaintiff's reliance on Defendant AMERICAN's representations was justified because the Defendant AMERICAN's counsel assured her in writing that said agreement would be respected by Defendant AMERICAN.

9. That as a further proximate result of Defendants' fraud, deceit, and the facts alleged herein by Plaintiff, Plaintiff has forfeited her rights under various provisions of collective bargaining and labor statutes; has sustained a tarnished personnel record, and has been denied employment opportunities in her vocational field, and has suffered and sustained severe and emotional distress and mental suffering and experienced loss of earnings; and has further wasted time, money and energy--all for vain, in an attempt to secure a comparable position with an airline in her vocational field--all to her personal detriment within three (3) years prior to the filing of the within Complaint.

10. Plaintiff further states that the Defendant

UNION knowingly, willfully, and intentionally abandoned her during the final stages of the grievance procedures with the purpose and intent to cause her maximum oppression, fraud, and the like, and with the knowledge that her grievance was meritorious and otherwise acted recklessly and arbitrarily in its refusal to prosecute aforesaid grievance; and that said abandonment was undertaken by the Defendant UNION as an economic weapon to force her to execute and complete the settlement agreement outlined and proposed by the Defendant AMERICAN as previously identified herein.

11. In doing the acts herein alleged, Defendants acted with oppression, fraud, malice, and the like.

12. The Plaintiff further avers that the fraud and deceit practiced by the Defendants--and, in particular, the Defendant UNION--was not discovered by the Plaintiff on a date within three (3) years before the commencement of the within action.

13. The Plaintiff could not in the exercise of due diligence discover the fraud and deceit conferred by the Defendants up until this time because she did not actively or seriously seek re-employment with other airline employers until a period approximately three (3) years from the commencement of the within action; and as a consequence, had no way of knowing the true condition of the records and the false and damaging information communicated, in particular, by Defendant AMERICAN to prospective airline employers and was otherwise thwarted by Defendant AMERICAN who willfully refused

to permit the Plaintiff to examine and reviev her personnel file and employment history to ferret out any abuses or false or disparaging information contained therein.

14. Further, Plaintiff alleges that at all times alleged herein, Defendant UNION was a Fiduciary to the Plaintiff, and so acting under the collective bargaining agreement of appropriate Federal statute, Defendant was in control of and responsible for Plaintiff's well-being and for acting in her exclusive best interest; and Plaintiff relied upon the special representations and statements by the Defendant UNION in discharge of their Fiduciary duties entered into the agreement in question herein, causing her to surrender her causes of action under collective bargaining and the grievance procedures identified therein, and further waiving her rights against Defendant AMERICAN.

15. That said conduct of Defendant UNION was undertaken to serve the interest of both the Defendant UNION and Defendant AMERICAN at the expense of the Plaintiff's best interests and, as such, constitute a breach of the Collective Bargaining Agreement and also of the Defendant UNION's statutory Duty of Fiar Representation.

WHEREFORE, the Plaintiff prays judgement as follows:

1. For general damages in an amount of Five Hundred Thousand Dollars ($500,000).

2. For specific damages in an amount to be ascertained herein.

3. For punitive and exemplary damages on account of the willful and vanton acts undertaken by the Defendants with malice intended to cause the Plaintiff to surrender her causes of action against the Defendants under the Collective Bargaining Agreement and other Federal labor statutes in the amount of Five Hundred Thousand Dollars ($500,000); and

4. For costs of suit and for further and additional relief that the Court may deem necessary.

COUNT IV

1. All of the allegations alleged in support of Counts I, II and III are realleged in support of Count IV herein. All of the allegations contained in Count IV are realleged in Counts I, II and III as though fully alleged in support of those counts.

2. On or about November 1972 Defendant AMERICAN in an attempt to cause and induce the Defendant UNION to refrain from exercising and discharging its Fiduciary duties of fair representation oving to the Plaintiff to act in her best interest and to prosecute and press her grievance which was meritorious did knovingly and willfully cause the Defendant UNION to breach its aforesaid duty to deal in good faith with the Plaintiff and to extend her the full-range of the duty of fair representation oved to her by applying fraud, trickery, duress, and other artifice upon the Plaintiff in order that she would surrender her causes of action against the Defendant AMERICAN all to her general detriment and for the exclusive

purpose of serving the interest of the Defendant UNION and Defendant AMERICAN.

3. That as a direct and proximate result of said tortious interference with aforesaid fiduciary relationship as practiced by the Defendant AMERICAN, the Plaintiff was effectively debarred from receiving the benefits and protections engendered in the Collective Bargaining Agreement extending to her and by the concerted action of the Defendant AMERICAN and the Defendant UNION in violating the UNION's statutory duty of fair representation recognized as a duty to deal in good faith under pre-existing common law.

4. That as a proximate and direct result of said tortious interference by Defendant AMERICAN, the Plaintiff has sustained general damages in an amount of Five Hundred Thousand Dollars ($500,000) approximately, as well as physical and emotional distress resulting therefrom, and has lost rights and wages, as well as earnings and the like.

WHEREFORE, the Plaintiff prays for damages as follows:

1. For general damages in an amount of Five Hundred Thousand Dollars ($500,000).

2. For specific damages in an amount to be ascertained herein.

3. For compensatory and punitive damages on account of the intentional and willful acts of the Defendant AMERICAN in causing said interference with the Defendant UNION's

exercise of its duty of fair representation for the purpose of destroying rights of the Plaintiff protected under the Collective Bargaining Agreement in an amount of Five Hundred Thousand Dollars ($500,000); and

4. For costs of suit and for further additional relief that the Court may deem necessary and appropriate.

COUNT V

1. Plaintiff realleges each and every allegation stated in Counts I, II, III, and IV as though fully alleged in support of Count V herein. Further, all of the allegations in support of Count V are incorporated into Counts I, II, III and IV as though fully alleged in support of those counts as stated herein.

2. The Plaintiff further alleges that the Defendant UNION had a statutory Fiduciary Duty to her known as the duty of fair representation which required that they process her grievance, which was known by them to be meritorious, and that said Defendant UNION not be induced by Defendant AMERICAN, as it is alleged, to compromise the Plaintiff's well-being and interest to have other UNION interests served and fostered.

3. Plaintiff alleges that the Defendant UNION had a duty to represent its membership fairly and even-handedly and to refrain from sacrificing the Plaintiff's interests in order to gain favors from the Defendant Employer with respect to other members of the bargaining unit.

4. The Plaintiff further alleges that the Defendants breached its duty of fair representation and its duty to deal in good faith by deceiving her and abandoning her grievance, knowing that it was meritorious and knowing that by doing so that she would be subject to financial duress and coercion which would cause her to execute a worthless settlement agreement to her detriment and to the Defendant AMERICAN's best interests.

5. Plaintiff further alleges that the Defendant UNION "sacrificed" her cause in derogation of its statutory duty of fair representation with an intention to receive other favors from the Defendant AMERICAN which would redound to the Defendant UNION's benefit at the expense of its membership and at the expense of the Plaintiff's well-being--all in derogation of the Collective Bargaining Agreement.

6. Plaintiff further states that the Defendant UNION breached its duty of fair representation by acting in gross disregard and with reckless indifference to the rights of the Plaintiff and to the obvious validity of her claim and grievance.

7. Plaintiff further states that the Defendant UNION failed to exercise its duty with the good faith and honesty expected of it and that the conduct of the Defendant UNION reflected hostility, discrimination against the Plaintiff and was calculated in bad faith to cause her to forfeit all of her rights under collective bargaining and governing Federal labor statutes.

8. Plaintiff alleges that as a result of the aforesaid conduct by the Defendant UNION, her emotional security and well-being have been damaged and her mental solicitude inextricably linked with the Fiduciary duty owed to her to represent her interests fairly and in good faith and free from discrimination and hostility, has also been destroyed, and that she has sustained emotional and mental distress thereby for which she seeks compensatory damages.

9. That as a further result of the willful, wanton, and intentional breach of its statutory duty of fair representation and good faith or in conscious, gross and reckless disregard of the Plaintiff's rights to be represented fairly, Plaintiff also seeks punitive damages against the Defendant UNION to punish and deter said outrageous acts as it is alleged herein.

WHEREFORE, the Plaintiff prays for damages as follows:

1. For general damages in the amount of Five Hundred Thousand Dollars ($500,000).

2. For compensatory damages in the amount of Five Hundred Thousand Dollars ($500,000).

3. For special damages in an amount to be determined herein.

4. For punitive damages on account of the willful and wanton acts undertaken by the Defendant UNION in failing to prosecute the Plaintiff's grievance, abandoning and defrauding her and placing her under duress equal in an amount to Five Hundred Thousand Dollars ($500,000); and

5. For further or additional relief as the Court deems necessary and appropriate.

COUNT VI

1. The Plaintiff realleges every allegation set forth in Counts I, II, III, IV, and V as though fully alleged in support of Count VI herein. Plaintiff further states that all the allegations in support of Count VI are to be regarded as having been alleged in support of Counts I, II, III, IV and V herein.

2. Plaintiff further alleges that Defendant AMERICAN by its knowing and intentional communication of false, erroneous and fraudulent information to third parties--including, but not limited to, prospective airline employers--has caused said prospective employers of Plaintiff to sever and rescind relationships with the Plaintiff, and to further deny the Plaintiff employment opportunities and advantages which--but for the intentional and tortious acts of the Defendant AMERICAN, BAUER and CURHAN--would not have been destroyed and lost by the Plaintiff as she alleges they have been.

3. Plaintiff further states by specific allegation that within one (1) year from the date of the commencement of this action she possessed the background, excellence, skills, expertise, training, appearance, and the like which entitled her to final consideration in numerous airline vocational opportunities.

4. Plaintiff further states that but for the tortious interference with her advantageous relationships, she would

have received substantial opportunities of employment from prospective airline employers.

5. Plaintiff further states that after having been carefully screened by other airline employers and advised that she has met the criteria of final selection, she has on several occasions been denied said employment opportunities after said prospective employers "checked her references with AMERICAN."

6. Plaintiff further states by specific allegation that in the instance of one prospective employer she was denied employment opportunity when a check of her employment history was made with Defendant AMERICAN; and said prospective employer or employer's agent was advised that the Plaintiff had "never been employed by Defendant AMERICAN" and that Defendant AMERICAN did not verify any of Plaintiff's employment or work history with AMERICAN.

7. The Plaintiff further states that the Defendant AMERICAN actively and knowingly induced said prospective employers to refuse to hire or recruit the Plaintiff, and that said acts of Defendants were undertaken with an intent to cause the Plaintiff emotional harm and detriment.

8. Plaintiff further states that but for the tortious interference with the aforestated advantageous relationships by the Defendant AMERICAN, she would have been recruited for employment by a great number of the prospective airline employers with whom she had interviewed and where she had advanced to the final consideration interview subject only to

reference verification from Defendant AMERICAN and check; and that on account of aforesaid tortious interference with the advantageous relationships, the Plaintiff was summarily denied employment.

9. In addition to the actual damages sustained on account of said tortious interference by Defendant AMERICAN with Plaintiff's advantageous relationships, Plaintiff also alleges she has sustained substantial emotional and mental harm and suffering due to the damaging effect of said interference on her overall emotional and physical well-being.

10. Plaintiff further alleges that said acts and conduct of the Defendants is undertaken with willful and wanton disregard for her well-being and is further intended to annoy, vex, injure and harm the Plaintiff in the manner stated by her in her Complaint.

WHEREFORE, the Plaintiff prays for damages as follows:

1. For general damages in the amount of Five Hundred Thousand Dollars ($500,000).

2. For specific damages in an amount to be ascertained herein.

3. For compensatory damages in an amount of Five Hundred Thousand Dollars ($500,000).

4. For punitive damages in the amount of Five Hundred Thousand Dollars ($500,000) because of the persistent, malicious and intentional bad faith carried out by the Defendants; and

5. For such other relief the Court may deem necessary and appropriate.

COUNT VII

1. Plaintiff realleges every allegation set out in Counts I thru VI inclusive as though fully alleged in support of Count VII herein. Further, all allegations in support of Count VII are to be realleged and incorporated in support of Counts I thru VI inclusive.

2. Plaintiff specifically avers that the Defendant UNION did knowingly abandon her grievance after it was docketed with the Systems Board of Adjustment with actual knowledge that the Plaintiff's grievance was meritorious and that her discharge was spurious and trumped up and achieved by personal malice by Defendant AMERICAN and Defendant BAUER.

3. Plaintiff further avers that said abandonment of her grievance by Defendant UNION after it was lodged was done with the Defendant's awareness of her peculiar susceptibility to said withdraval of representation and was the proximate cause of the Plaintiff's incapacity to prosecute her grievance consistent with the expectation created in her by the Defendant UNION's representations, actions, and the like.

4. Plaintiff further alleges that said acts of abandonment and misrepresentations concerning the purported review and investigation of the Plaintiff's grievance by the Defendant UNION were intended to delimit the right of the Plaintiff--a

member in good standing of said Defendant UNION--to actively prosecute an action against the Defendant AMERICAN and Defendant UNION in either a federal court of law or before the appropriate administrative tribunal and that said acts produced the harm and results intended by the Defendants.

5. Plaintiff further avers that said conduct was done to advance the interest of the Defendant UNION at the expense of the Plaintiff and otherwise was undertaken to deny the Plaintiff her equal rights engendered under 29 USC Section 411 and further designed to disenfranchise the Plaintiff, leaving her defenseless against the wronging Defendant AMERICAN, responsible for her unwarranted discharge.

6. Plaintiff also states that the Defendant UNION's conduct was arbitrary, capricious, and grossly discriminatory and that said Defendant UNION did not exercise the due diligence expected of it, nor did it comport itself consistent with the care of a reasonable, prudent man in like circumstances, in the alternative.

7. Plaintiff further avers that the Defendant UNION's conduct was undertaken with an intent to injure, annoy and vex the Plaintiff and with her peculiar susceptibility to its effect and further designed to disenfranchise the Plaintiff from vindicating her grievance legitimate and meritorious on its face.

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WHEREFORE, the Plaintiff prays for damages as follows:

1. For general damages in an amount of Five Hundred Thousand Dollars ($500,000);

2. For actual damages in accordance with proof;

3. For compensatory and punitive damages on account of the Defendat UNION's gross violation of the Plaintiff's statutory bill of rights, causing her to refrain in vindicating her grievance undertaken with malice and an intention to discriminate against the Plaintiff and for the resulting emotional and mental torment visited upon the Plaintiff as a consequence thereof;

4. For costs of suit;

5. For such further and alternative relief as the Court may deem necessary to redress the Defendant's violation of its statutory duty of good faith and the harm sustained by the Plaintiff as a result of the Defendant UNION's violation of her statutory bill of rights.

Dated: March 2, 1981

Respectfully submitted:

BY: _____

EUGENE JOHN CARELLA, ESQ.
P. O. Box 67292
Century City Station
Los Angeles, California 90067
(213) 822-8428

STATE OF CALIFORNIA—HUMAN RELATIONS AGENCY

RONALD REAGAN, Governor

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD
714 P STREET, SACRAMENTO 95814

ROBERT W. SHOB
Chairman
LOWELL NELSON
Vice Chairman
CLAIRE HANNAN
JOHN L. WEISS
DON MURPHY

N O T I C E

Paula E. Pfister
11728 Wilshire Boulevard
Los Angeles, California 90025

APPEALS BOARD DECISION NO. 70-5019

Enclosed is a copy of the decision of the California Unemployment Insurance Appeals Board in this matter.

Section 410 of the California Unemployment Insurance Code provides:

> "A decision of the Appeals Board is final, except for such action as may be taken by judicial tribunal as permitted or required by law."

The Attorney General has ruled that under this section of the code the Appeals Board cannot review, rehear, reconsider, or set aside its decision. (37 Ops. Cal. Atty. Gen. 133) Therefore, the board may not act upon a request to reopen the appeal and reconsider the enclosed decision.

Any action to obtain a court review of the decision must be initiated by you. The Appeals Board cannot advise you as to the procedure which must be followed in the preparation and filing of any such action.

DATE MAILED: DEC 15 1970

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

PAULA E. PFISTER
(Claimant)
11728 Wilshire Boulevard
Los Angeles, California

S.S.A. No. 185-34-1930

AMERICAN AIRLINES
(Employer)
Los Angeles International Airport
Los Angeles, California

Employer Account No. 016-0027

BENEFIT DECISION

Case No. 70-5019

The employer appealed from Referee's Decision No. LA-1812 which held that the claimant was entitled to benefits under the Unemployment Insurance Code and that the employer's account is not relieved of charges under section 1032 of the code.

After a careful review of the record which includes the testimony and evidence adduced before the referee and after having found that no material errors of fact or law appear to have been made, we adopt the statement of facts and reasons for decision of the referee as our statement of facts and reasons for decision.

The decision of the referee is affirmed. Benefits are payable as provided in the referee's decision and the employer's account is not relieved of charges.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT

LOWELL NELSON

CLAUDE MINARD

013-06210
DATE MAILED: DEC 15 1970
DE 3231 REV. 12 (1-70)

State of California

DECISION OF THE REFEREE

In the Matter of:

Paula E. Pfister
11723 Wilshire Boulevard
Los Angeles, California 90025

Claimant-Appellant

SSA No.: 115-34-1930

American Airlines
633 Third Avenue
New York, New York

Employer

Account No. 016-0027

LOS ANGELES REFEREE OFFICE

Case Number: LA-1 32

Date Appeal to Referee Filed:
July 19, 1970

Time and Place of Hearing:
October 2, 1970
Santa Monica, California

Parties Present:
Claimant
Employer
Department

STATEMENT OF FACTS

The claimant appealed from a Department determination which disqualified her for unemployment compensation benefits commencing June 7, 1970 and continuing until she had earned $210, or more, on the ground that she was discharged for misconduct connected with her work. A Department ruling held the employer's reserve account relieved of benefit charges.

The claimant was last employed as an airline stewardess from June 17, 19 5 until she became separated on June 17, 1970 under the following circumstances.

The employer has reciprocal agreements with other airlines, including Alitalia Airlines, in which its employees may fly on the other airlines at a reduced rate but this does not include the parents of the employee. The employer allows its employees and their relatives to fly on its own airline at discount rates. The rules are set forth in the stewardess manual and in various regulations of the employer. The manual and regulations were made available to the claimant. The claimant testified that the regulations are vague and that the rules constantly change with new regulations that are issued from time to time.

In August or September of 19 9, while the claimant was on a flight while on duty with her employer, a sales manager of Alitalia Airlines was also on that

Date Mailed: October 19, 1970
013-A 21

REV

flight and told her that Alitalia Airlines and the claimant's employer had reciprocal agreements wherein the claimant and her relatives, including her mother, could fly their airline at a reduced rate. She was told that her mother was eligible to fly at the reduced rate as long as she went too. On April 23, 1970, the claimant obtained written authorization for a discount ticket on Alitalia Airlines but the authorization was issued solely in the name of the claimant. When the claimant decided to take her mother for a trip on Alitalia Airlines she delivered the authorization to Alitalia Airlines, or its representative. She assumed her mother was also eligible for the discount because of the representations of the sales manager from Alitalia Airlines. She did not verify this information with her employer. A friend of the claimant testified that he saw the claimant relinquish possession of the written authorization of April 23, 1970, and the words "and mother" were not on the authorization at that time. The claimant denies inserting the words "and mother". The claimant and her mother took a trip on Alitalia Airlines from May 10 to May 17, 1970 at a reduced rate.

When the written authorization was returned to the employer, the words "and mother" had been typed on it. On June 17, 1970, the claimant saw the authorization and for the first time she saw the words "and mother" typed on it. The claimant was discharged from employment on June 17, 1970. The employer testified that the claimant was discharged for forging the words "and mother" to the authorization and for the dishonest act and for misrepresentation.

REASONS FOR DECISION

Section 1256 of the California Unemployment Insurance Code provides that an individual is disqualified for benefits, and sections 1030 and 1032 of the code provide that the employer's reserve account may be relieved of benefit charges, if the claimant has been discharged for misconduct connected with his most recent work.

The California District Court of Appeals in Parker Glass Company v. Stewart (1959), 170 Cal. A p. 2d 719, 339 P. 2d 947, held that the term "misconduct", as it appears in section 1256 of the code is limited to conduct which shows wilful or wanton disregard of the employer's interest, such as deliberate disregard of the standards of behavior which the employer has a right to expect of his employees or carelessness or negligence of such a degree or recurrence as to show wrongful intent or evil design. On the other hand, the Court continued, mere inefficiency, unsatisfactory conduct, poor performance because of inability or incapacity, isolated instances of ordinary negligence or inadvertence, or good faith errors in judgment or discretion are not "misconduct". The Court also held that the employer has the burden of establishing "misconduct" to protect its reserve account.

In this case, there is no direct evidence of forgery on the part of the claimant. She denies inserting the "and mother". When she delivered possession

of the authorization to Alitalia Airline, or its representative, those words did not then appear. When the authorization was returned to her employer the words were then on the authorization. Under these circumstances, it is reasonable to assume that those words were added during the interval from the time the claimant delivered the authorization to Alitalia Airlines, or its representative, to the time when the employer received it. The claimant relied in good faith upon the representation of the sales manager from Alitalia Airlines. She testified that the regulations change from time to time. While there may be evidence of carelessness or of good faith error in judgment on the part of the claimant in not verifying the information with her employer, the referee finds that the claimant did not intentionally fail or refuse to her employer nor act in wanton disregard of that duty. Under these circumstances, the referee finds that the claimant was not discharged for misconduct connected with her work within the meaning of section 12F.

DECISION

The determination and order of the Department are reversed. The claimant is not disqualified for benefits under code section 12F. The employer's reserve account is chargeable.

[illegible], Referee

AA-1732
jmh

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